

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

PREMIER CADILLAC, INC.

and

Case 17--CA--14988

DISTRICT 71, INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS, AFL--CIO
and LOCAL 552, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA, Jointly

DECISION AND ORDER

By Chairman Stephens and Members Devaney and Kaudabaugh
Upon a charge filed by the Unions on May 1, 1990, and an amended charge

filed on July 24, 1990, the General Counsel of the National Labor Relations Board issued an amended complaint on August 21, 1990, against the Respondent, Premier Cadillac, Inc., alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. On September 4, 1990, the Respondent filed an answer, admitting in part and denying in part the allegations of the amended complaint. By letter dated October 5, 1990, the Respondent withdrew its answer.

On October 16, 1990, the General Counsel filed a Motion to Transfer Proceeding to the Board and for Summary Judgment, with exhibits attached. On October 22, 1990, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The amended complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the Amended Complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Respondent expressly acknowledged in the letter withdrawing its previously filed answer that such action would result in a Motion for Summary Judgment being filed. Withdrawal of the answer is tantamount to a failure to file a timely answer to the amended complaint.

In light of the withdrawal of the answer and the absence of good cause being shown for the lack of a timely filed answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent, a corporation with an office and place of business in Kansas City, Missouri, has been engaged in the retail sale and servicing of automobiles. During the 12-month period ending March 31, 1990, the Respondent purchased and received at its Kansas City, Missouri facility goods and materials valued in excess of \$50,000 directly from points outside the State of Missouri. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Unions are labor organizations within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

Since about 1966, and at all times material, the Unions have been the joint exclusive collective-bargaining representative, by virtue of Section 9(a) of the Act, of the Respondent's employees in the following unit, which is appropriate for bargaining within the meaning of Section 9(b) of the Act:

All employees employed in the Service and Parts Department at Respondent's facility, including any full-time garage employees, but EXCLUDING office clerical employees, auto and truck salesmen, service salesmen, control tower operators, testers, and supervisors.

The Respondent's recognition of the Unions as the joint exclusive collective-bargaining representative of the unit employees has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms from February 1, 1988, through January 31, 1991.

Since about March 2, 1990, the Respondent has failed to pay unit employees their accrued wages and vacation pay in accord with the parties' collective-bargaining agreement. The Respondent has engaged in such conduct without prior notice to the Unions, without affording the Unions an opportunity to bargain, and without the consent of the Unions.

Furthermore, on about March 5, the Respondent sold the assets of its business to Superior Buick Cadillac, Inc. On or about March 8, the Unions requested that the Respondent comply with all terms of the existing collective-bargaining agreement, including the provisions of paragraph 17:09 setting forth the Respondent's obligation to bargain with the Unions regarding the effects of the Respondent's decision to sell its assets. Since about March 8, the Respondent has failed and refused to bargain with the Unions, as required by the collective-bargaining agreement, regarding the effects of the

Respondent's decision to sell its assets.¹ We find that the aforementioned refusals to abide by provisions of the parties' collective-bargaining agreement, to pay unit employees their accrued wages and vacation pay, and to bargain with the Unions about the effects of the sale of the Respondent's assets violated Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By failing since about March 2, 1990, to pay employees their contractually accrued wages and vacation pay, and by failing and refusing since about March 8, 1990, to bargain with the Unions over the effects of the Respondent's decision to sell its assets, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order that the Respondent make the unit employees whole by paying them contractually accrued wages and vacation pay which the Respondent has unlawfully failed to pay since about March 2, 1990. Such sums shall be computed as prescribed in Ogle Protection Service, 183 NLRB 682 (1970), with interest to be computed as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987).

¹ Even if the parties' collective-bargaining agreement did not expressly provide for bargaining about the effects on unit employees of the Respondent's decision to sell its assets, there is an independent statutory obligation to afford the Unions notice and opportunity to engage in such bargaining. E.g., Willamette Tug & Barge Co., 300 NLRB No. 32 (Sept. 28, 1990).

We shall also order the Respondent, on request by the Unions, to bargain about the effects on unit employees of the Respondent's decision to sell the assets of its business to Superior Buick Cadillac, Inc. Furthermore, in the event that employees were displaced by the sale of assets, thereby eroding the collective strength of the bargaining unit, we find it necessary in such circumstances to provide a remedy to recreate in some practicable manner a situation in which the parties' bargaining is not entirely devoid of economic consequences for the Respondent. Accordingly, we shall require the Respondent to pay backpay to its employees in a manner similar to that required in Transmarine Corp., 170 NLRB 389 (1968). Consequently, the Respondent shall pay unit employees who were displaced by the sale of assets at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Unions on those subjects pertaining to the effects on unit employees of the sale of the assets of its business; (2) a bona fide impasse in bargaining; (3) the failure of the Unions to request bargaining within 5 days of this Decision and Order, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Unions; or (4) the subsequent failure of the Unions to bargain in good faith. In no event shall the sum paid to any of these employees exceed the amount they would have earned as wages from the date on which they were displaced, to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in the

Respondent's employ. Interest on all such sums shall be computed in the manner prescribed in New Horizons for the Retarded, supra.

Finally, in light of the Respondent's sale of the facility where we would ordinarily order the posting of a notice to employees regarding unfair labor practices and remedies, we shall order the Respondent to mail signed copies of the notice to the Unions and to all individuals employed in the bargaining unit on March 2, 1990.

ORDER

The National Labor Relations Board orders that the Respondent, Premier Cadillac, Inc., Kansas City, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to pay unit employees their contractually accrued wages and vacation pay.

(b) Failing and refusing to bargain with the Unions about the effects of the decision to sell the Respondent's assets on employees in the following appropriate unit:

All employees employed in the Service and Parts Department at Respondent's facility, including any full-time garage employees, but EXCLUDING office clerical employees, auto and truck salesmen, service salesmen, control tower operators, testers, and supervisors.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make its unit employees whole by paying accrued wages and vacation pay in the manner set forth in the remedy section of this decision.

(b) Make whole, in the manner set forth in the remedy section of this decision, any unit employees displaced from their jobs as a result of the Respondent's sale of the assets of its business.

(c) Upon request, bargain with the Unions as the exclusive representative of the unit employees about the effects on those employees of its decision to sell its assets, and reduce to writing any agreement reached as a result of such bargaining.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Mail an exact copy of the attached notice marked "'Appendix'"² to the Unions and to all unit employees employed by the Respondent immediately prior to the March 5, 1990 sale of the assets of its business. Copies of the notice, on forms provided by the Regional Director for Region 17, shall upon receipt be signed by the Respondent's authorized representative and shall immediately thereafter be mailed as directed.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. December 31, 1990

James M. Stephens, Chairman

Dennis M. Devaney, Member

John N. Raudabaugh, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Mailed by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to mail and abide by this notice.

WE WILL NOT fail and refuse to bargain with District 71, International Association of Machinists and Aerospace Workers, AFL--CIO and Local 552, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, jointly, by failing to pay employees their accrued wages and vacation pay as set forth in our collective-bargaining agreement with those Unions.

WE WILL NOT fail and refuse to bargain in good faith with the Unions about the effects of our decision to sell the assets of our business on employees in the following appropriate unit:

All employees employed in the Service and Parts Department at the Employer's Kansas City, Missouri facility, including any full-time garage employees, but excluding office clerical employees, auto and truck salesmen, service salesmen, control tower operators, testers, and supervisors.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make unit employees whole, with interest, by paying them contractual accrued wages and vacation pay that we have failed to pay, and WE WILL make whole, in the manner directed by the Board, any unit employees displaced from their jobs as a result of the sale of the assets of our business.

WE WILL, on request, bargain collectively with the Unions about the effects on

unit employees of our decision to sell our assets, and WE WILL reduce to writing any agreement reached as a result of such bargaining.

PREMIER CADILLAC, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 5799 Broadmoor, Suite 500, Kansas City, Missouri 66202-2408, Telephone 913--236--2766.